

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-140057-12

Date:

March 18, 2013

Legend

Year 1	=
Year 2	=
e%	=
f%	=
<u>C</u>	=
<u>D</u>	=
j	=
k	=
m	=
Term Note	=

Date a	=
Date b	=
\$x	=
\$y	=

Dear :

This letter responds to a letter dated September 14, 2012, submitted on your behalf and requesting an extension of time to make the election described in § 108(c)(3)(C) of the Internal Revenue Code, which allows an electing taxpayer to treat certain indebtedness as qualified real property indebtedness.

FACTS

You filed a joint federal income tax return for Year 1. During Year 1, you owned a e% profits and capital interest in C, a limited liability company treated as a partnership for federal income tax purposes. You were also the sole shareholder of D, an S corporation. D owns the remaining f% profits and capital interest in C.

At all relevant times C is engaged in the purchase and management of j. C finances its purchases through a combination of equity and debt. Prior to Year 1, C borrowed money to purchase, through a wholly-owned limited liability company, a k interest in m. In Date a, C obtained additional financing to purchase all of the interests in m. In combination with this additional financing, C refinanced the loans used to acquire its k interest in m by executing the Term Note.

During Year 1, C owed approximately \$x on the Term Note. Due to declining economic conditions, on Date b, the holder of the Term Note agreed to forgive all of C's obligations under the Term Note for \$y. As a result of this transaction, C realized discharge of indebtedness (COD) income.

C did not report the COD income on its Form 1065 or on the Schedule K-1 it furnished to you for Year 1. You also did not include the COD income on your Federal income tax return, nor did you file a Form 982, for Year 1. After the returns were filed, you met with your tax advisors and determined that C should have reported the COD income on its Federal income tax return, including the Schedule K-1 furnished to you, for Year 1. In addition, you and your advisors determined that you could have made the election described in § 108(c)(3)(C). As of the date of your letter requesting an extension of time to make the § 108(c)(3)(C) election you had not received any notice from the Internal Revenue Service relating to your failure to include the COD income on your Federal income tax return for Year 1.

LAW AND ANALYSIS

Section 61(a)(12) provides that, except as otherwise provided, gross income includes income from the discharge of indebtedness.

Section 108(a)(1)(D) provides that, in the case of a taxpayer other than a C corporation, gross income does not include income from the discharge of qualified real property indebtedness. Section 108(c)(1)(A) provides that amounts excluded from gross income under § 108(a)(1)(D) are applied to reduce the basis of the depreciable real property of the taxpayer.

Section 108(c)(3) provides that qualified real property indebtedness means indebtedness that (A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property, (B) was incurred or assumed before January 1, 1993, or if incurred or assumed after that date, is qualified acquisition indebtedness, and (C) with respect to which the taxpayer makes

an election to have § 108(c)(3) apply. Section 108(c)(4) provides that qualified acquisition indebtedness means, with respect to any real property described in § 108(c)(3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

Section 108(d)(6) provides that, in the case of a partnership, § 108(a) and (c) are applied at the partner level.

Section 108(d)(9)(A) provides that the § 108(c)(3)(C) election is made on the taxpayer's return for the taxable year that the discharge occurs or at another time specified in regulations promulgated by the Secretary. Section 108(d)(9)(C) provides that the § 108(c)(3)(C) election is made in the manner prescribed in regulations.

Section 1.108-5(b) of the Income Tax Regulations provides that the § 108(c)(3)(C) election must be made on the timely filed (including extensions) Federal income tax return for the taxable year that the taxpayer has COD income that is excludible from gross income under § 108(a). The election is made on a completed Form 982 in accordance with that Form and its instructions.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(d) defines the term "regulatory election" as including an election the due date of which is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief before the failure to make the regulatory election is discovered by the Service, (ii) failed to make the election because of intervening events beyond the taxpayer's control, (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election, (iv) reasonably relied on the written advice of the Service, or (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides, however, that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the

taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested, (ii) was fully informed of the required election and related tax consequences, but chose not to file the election, or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Furthermore, § 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information provided and the representations made, we conclude that you acted reasonably and in good faith within the meaning of § 301.9100-3, and that granting an extension of time to make the § 108(c)(3)(C) election will not prejudice the interests of the Government. Our conclusion is based, in part, on your representation that you and your spouse, and C, have filed amended Federal income tax returns for Year 2, which is subsequent to Year 1, that take a position consistent with the relief requested in this ruling.

Accordingly, you are granted an extension of 45 days from the date of this letter to file an amended Federal income tax return for Year 1 to make the election described in §§ 108(c)(3)(C) and 1.108-5(b). The election is to be made on Form 982.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether the Term Note is qualified real property indebtedness within the meaning of § 108(c)(3)(A) or (B) that is eligible for the election described in § 108(c)(3)(C).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

JEFFREY T. RODRICK
Senior Technician Reviewer, Branch 5
(Income Tax & Accounting)